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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,006	12/31/2003	Matthew F. Kelly	BLLYP032.US02	5521
68635 7590 03/11/2009				
TIPS/BALLY				
c/o Intellevate LLC				
P.O. BOX 52050				
Minneapolis, MN 55402				
EXAMINER				
MOSSER, ROBERT E				
ART UNIT		PAPER NUMBER		
3714				
NOTIFICATION DATE		DELIVERY MODE		
03/11/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcody@ballytech.com  
phickman@tipsgroup.com  
docketing@intellevate.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/751,006

**Applicant(s)**

KELLY ET AL.

**Examiner**

ROBERT MOSSER

**Art Unit**

3714

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 19 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Dmitry Suhol/  
Supervisory Patent Examiner, Art Unit 3714

Continuation of 11, does NOT place the application in condition for allowance because:

In the applicant presented arguments dated February 19, 2009 the applicant presents following two arguments directed to overcoming the pending rejections.

- 1) The prior art of Williams allegedly fails to teach enabling player to select a game from a plurality of games.
- 2) The claim language directed selecting a game from a plurality of differing games would exclude the claim interpretation wherein the plurality of differing games are of the same game type.

These arguments however are considered non-persuasive based on the following:

1) Figure 6 of Williams provides additional evidence of the games Bridge Chess, and checkers while the exemplary patented claims 1 and 8 reference the "selected game". If as so alleged by the applicant and William did not provide for the selection of a game type from a plurality of differing game types then selection of a game as claimed and users preference towards a plurality of game would be extraneous activities to the claimed invention. Alternatively stated the information regarding player's ability and interest regarding a plurality of games when only a singular game type is available is contradictory to the claimed selection step and would defeat any function or purpose to the entry of preferences for a plurality of differing game type as demonstrated in figure 6.

2) The claim language places no boundaries on how the "differing games" differentiate from one another. Applicants reference to the game services box of figure 3 in the instant application and suggestion of an implicit teaching of the specification of the instant application do not impart a narrow definition to the phrase "differing games", as suggested by the applicant.

The applicant referenced element of figure 3 speaks to game service providers and does not speak to the games provided thereby. Arguments that this element would suggest or support the presentation of differing game are plainly not supported as the figure does not explicitly address the player selection of a game from a plurality of differing games and further presents in contradiction thereto box 302, reading "player logs on purchases credits, then plays a game"(emphasis added).

With regards to the applicant's arguments that the specification teaches and limits the manner in which the games differ, it is respectfully noted that the applicant's remarks are of a circular nature in so much as they would suggest that differing game must differ from other differing games because they are different. As presented above however the manner in which these game differ is not limited by game type and would reasonable include choice of opponent, difficulty of opponent, as well as many other features. According the presented basis, does not support the narrow interpretation of "differing games" as differing game types, as suggested by the applicant.